

be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable. The Commission will charge at the salary rate(s) (basic pay plus 16 percent) of the employee(s) reviewing records.

(e) *Duplication of records.* Records will be duplicated at a rate of fifteen (15) cents per page. For copies prepared by computers, such as tapes, CDs, DVDs, or printouts, the Commission shall charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If the Commission estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(f) *Other charges.* The Commission will recover the full costs of providing services such as those enumerated below when it provides them in response to a direct request for such services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) *Payment of fees.* Remittance shall be in the form either of a personal check or bank draft drawn on a bank in the United States or a postal money order. Remittance shall be made payable to the order of the Treasury of the United States and mailed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(h) *Receipt of fees.* A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(i) *Restrictions on assessing fees.* The Commission shall not assess search fees or duplication fees under this paragraph if the Commission fails to comply with any time limit in these regulations. The Commission will not

charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Commission will not charge fees for the first 100 pages of duplication and the first two hours of search time.

(1) The elements to be considered in determining the “cost of collecting a fee” are the administrative costs of receiving and recording a requester’s remittance and processing the fee for deposit in the Treasury Department’s special account.

(2) For purposes of these restrictions on assessment of fees, the word “pages” means paper copies of 8.5” x 11” or 11” x 14.” Thus, requesters are not entitled to 100 computer disks, for example.

(3) For purposes of these restrictions on assessment of fees, the term “search time” means manual search. To apply this term to searches made by computer, the Commission will determine the hourly cost of operating the CPU and the operator’s hourly salary plus 16 percent. When the cost of such search (including operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of salary of the person performing the search (*i.e.*, the operator), the Commission will begin assessing charges for computer search.

**§ 9405.10 Fees to be charged—categories of requesters.**

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) *Commercial use requesters.* When the Commission receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are neither entitled to two hours of free search time nor 100 free pages of duplication. The Commission may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 9405.11(b)).

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(b) *Educational and non-commercial scientific institution requesters.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the record is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in the furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, the requester must fit the definition of a representative of the news media as stated in § 9405.2, and the request must not be made for commercial use. For purposes of this paragraph, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(d) *All other requesters.* The Commission shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

### § 9405.11 Miscellaneous fee provisions.

(a) *Charging Interest—notice and rate.* The Commission may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by the Commission within the 30-day grace period, even if it is not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* The Commission may assess charges

for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester or a group of requestors acting in concert has submitted requests that constitute a single request involving clearly related matters, the Commission may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* The Commission may not require a requester to make an advance payment (*i.e.*, payment before work is commenced or continued on a request) unless:

(1) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Commission will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, the Commission may require the requester to:

(i) Pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and